

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : 3:18-CR-00097
: (Judge Mariani)
Vs. :
ROSS ROGGIO : (Electronically Filed)

GOVERNMENT'S LETTER RESPONSE TO MOTION
TO CONTINUE SUPPRESSION HEARING

AND NOW comes the Government, by and through undersigned counsel and files the following letter response in opposition to Roggio's Motion to Continue the Suppression Hearing.

1. On January 22, 2021, this Honorable Court issued a scheduling Order setting May 27, 2021 for a suppression hearing.
2. On February 9, 2021, the United States Court of Appeals for the First Circuit issued an opinion in *Alasaad v. Mayorkas*, 98 F.3d 8 (1st Cir. 2021) which determined that neither a warrant nor probable cause is required for an electronic device search at the border.
3. Recognizing that *Alasaad* is not controlling on this Court, but that the decision in that case was both persuasive and

instructive to the issues presented at bar, the Government filed a supplemental brief for the Court's edification. Doc. 96.

4. On May 22, 2021, Roggio filed a response brief discussing *Alasaad*, and among other things highlighting that a Petition for Writ of Certiorari has been filed in that case.
5. Roggio now seeks a continuance of the suppression hearing scheduled for March 27, 2021, indicating “[i]n light of pendency of this important constitutional question and the division among the courts of appeals with respect to both the standard of suspicion required for electronic devices searches and the permissible scope of those searches, [the defendant] requests that the Suppression Hearing be continued until *Alasaad* Petition for Writ of Certiorari is resolved.” Doc. 98.
6. The Government recognizes that should the Supreme Court grant Certiorari that the decision may well impact the Court's resolution of the instant motion to suppress. However, the Government's opposition to continue the Suppression Hearing is based on two factors: first, that the Indictment in this matter was filed in 2018 (though the Government understands that

there is no speedy trial violation, this matter has been pending for a long time); and second, that witnesses, including those subpoenaed by the defense are traveling from as far away as Montreal, Canada to provide testimony.

7. Balancing the age of this matter, the inconvenience which would be associated with a continuance with the potential impact of *Alasaad*; the Government suggests that the Court should convene the Suppression Hearing while taking steps short of continuing the hearing to allow for uncertainty occasioned by the Writ of Certiorari filed in *Alaasad* including:
 - a. Allowing the parties to file supplemental briefs, and delaying the Court's decision on suppression pending the grant or denial of Writ of Certiorari; and,
 - b. Granting a request to reopen the suppression hearing, should additional testimony or evidence be necessary in light of the Supreme Court's grant of Certiorari and/or decision in *Alasaad*.

For all these reasons, the Government respectfully requests
the Court deny Roggio's Motion to Continue the Suppression
Hearing.

Respectfully submitted;

BRUCE D. BRANDLER
Acting United States Attorney

/s/ Todd K. Hinkley
Todd K. Hinkley
Assistant United States Attorney
Attorney I.D. No. PA 68881
United States Attorney's Office
William J. Nealon Federal Building
235 N. Washington Ave.
Scranton, PA 18503
Telephone: 570-348-2800
Email: todd.hinkley@usdoj.gov

Dated: May 21, 2021

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion to be competent to serve papers.

That this 21st day of May, 2021, he served a copy of:

**GOVERNMENT'S LETTER RESPONSE TO MOTION
TO CONTINUE SUPPRESSION HEARING**

by filing the same with ECF, to which the below recipients subscribe:

ADDRESSEE(S):

Gino Bartolai, Esquire

/s/Todd K. Hinkley
TODD K. HINKLEY
Assistant United States Attorney